

COURT FACILITIES DISPUTE RESOLUTION COMMITTEE

January 28, 2009

MINUTES

COMMITTEE MEMBERS PRESENT:

Ms. Karen Finn, Representative of the Department of Finance
Justice Ron Robie, Representative of the Judicial Council
Supervisor John Tavaglione, Representative of the California State Association of Counties

PRESENTERS:

Patricia Maitland, Principal Administrative Analyst, County Administrative Office, County of Monterey
Ms. Rona Rothenberg, Lead Negotiator for the Administrative Office of the Courts, Manager, Office of Court Construction and Management
Ms. Rachel J. Dragolovich, Attorney, Office of the General Counsel, Judicial Council of California, Administrative Office of the Courts
Ms. Gisele Corrie, Financial Manager, Office of Court Construction and Management, Administrative Office of the Courts

OTHERS PRESENT:

Elizabeth Howard, California State Association of Counties
Greg Rogers, Assistant Program Budget Manager, Department of Finance
Nathan Brady, Principal Program Budget Analyst, Department of Finance
Madelyn McClain, Budget Analyst, Department of Finance

CALL TO ORDER AND ROLL CALL:

Ms. Jennifer Osborn, Department of Finance, called the meeting to order at 9:00 a.m. and called the roll. A quorum was established.

APPROVAL OF THE MINUTES:

Ms. Karen Finn stated that the first item of business was the approval of the minutes from the October 28, 2008, meeting.

A motion was made by Supervisor Tavaglione and Second by Justice Robie to approve the minutes from the October 28, 2008, meeting.

The minutes were approved by a 3-0 vote.

ACTION ITEM:

Ms. Osborn noted that our next item was the Monterey County initiated dispute on the Failure to Reach an Agreement on the transfer for the following trial court facilities: (1) Salinas Courthouse-North Wing (27-A1), (2) Marina Courthouse (27-B1), (3) Monterey Courthouse (27-C1), (4) King City Courthouse (27-D1), and (5) Juvenile Courthouse (27-E1).

Ms. Patricia Maitland, Principal Administrative Analyst, County Administrative Office, County of Monterey, introduced herself. The County has invoked its statutory right to allow for a single agreement for all five facilities pursuant to Government Code Section 70322. The AOC had initially agreed to this approach and signed a Joint Declaration stating that they intended to transfer all five facilities under one agreement by December 31, 2008, thus relieving the county from any penalties associated with the County Facility Payment (CFP). On December 1, 2008, the AOC determined that it was not possible to transfer all facilities under one agreement, nor by December 31, 2008. This decision put the County into a fiscally precarious position in regards to the CFPs. Ms. Finn stated that their main concern was that the CFP would be subject to penalties (or multipliers) increasing the amount the County would pay in perpetuity because the transfers did not occur by December 31, 2008. Ms. Maitland stated that the penalties included two things, the inflation index and the statutory penalties. Supervisor Tavaglione

noted that the County invoked that right on September 23, 2008, and that the AOC was willing to pursue that path with the County from that point forward and asked about the Marina transfer. Ms. Maitland noted that the Marina facility agreement had already been completed and was ready to be transferred. Supervisor Tavaglione asked what the reason was for the AOC to reject the single transfer agreement for all five facilities. Ms. Maitland noted that no other county had invoked that right to date, as far as they were aware. There was concern on doing that because a single agreement for separate facilities had not been done before. Ms. Finn asked if there as there any other rationale or issues for denying the request? Ms. Maitland noted the AOC stated that there was insufficient time in which to transfer all five facilities. Supervisor Tavaglione asked if there was dispute on the CFP calculation. Ms. Maitland noted that the penalties would be included with the CFPs if the date of transfer was after December 31, 2008.

Ms. Rona Rothenberg, Lead Negotiator for the Administrative Office of the Courts, Manager, Office of Court Construction and Management introduced herself. Ms. Rachel J. Dragolovich, Attorney, Office of the General Counsel, Administrative Office of the Courts introduced herself. Ms. Rothenberg noted that there were 64 court facilities in 16 counties left to transfer and gave a brief description on the progress of the transfers completed to date. Ms. Rothenberg stated that the Marina facility transfer agreement had been completed in September of 2008. The County notified the AOC with the transmittal of the execution copies that they wanted to transfer all five facilities in one agreement. This had not been discussed before. There wasn't any effort from 2004 through 2008 on the four facilities that would be included with the fifth in that single agreement and so the AOC engaged in the ensuing couple of months to see if they could accomplish. Justice Robie noted that he was confused on whether or not the Marina facility was included in the transfers to date. Ms. Rothenberg noted that the Marina facility was included in the transfers to date. Justice Robie noted that if that transfer was completed, then it wouldn't be possible to transfer all five in one agreement. Ms. Rothenberg said that the other four could potentially be included in one agreement. The AOC recommended an alternative path which was to combine three like facilities into a single agreement because one of the issues was that was time in doing a single agreement for all five facilities. One of the issues was that four of them had not been developed at all in terms of the terms of transfer. Another major issue was that combining unlike facilities in a single agreement is very complex. The agreements can be hundreds of pages and are very detailed. Three of the facilities were Transfers of Responsibility, with the County being the managing party. The agreement has been drafted and transmitted to the County with our current progress continuing it can be completed by March 31, 2008. Justice Robie asked for the definition of "like" facilities. Ms. Rothenberg noted that these three facilities were shared-use. The Marina facility was a transfer of title with exclusive court use. The Salinas facility was a transfer of responsibility with a deferred transfer of title and with exclusive court use and has bonded indebtedness which is a large pending project, multi-million dollar consisting of the reconstruction of the Salinas Courthouse. Supervisor Tavaglione asked if the single agreement would have included the Marina facility. Recognizing the complication of the Salinas Facility, could the other three facilities, where they were pursuing a path of single agreement, could that have been accomplished by December 31, 2008? Ms. Rothenberg stated that she didn't get involved until late November, in talking to the counsel and staff; it was the intention of the state as documented in the Joint Declaration to endeavor to complete the transfers by December 31, 2008. But if it came apparent during the ensuing two months, there wasn't enough documentation to accomplish this task. The lack of progress from the previous four years could not have been made up in two months. Ms. Finn asked why the Joint Declaration was signed by the AOC. Had they had any experience in negotiating three to four facilities in a couple of months even though no progress had been made to date? Ms. Dragolovich stated that in July of 2008 the AOC was working on term sheets for all the facilities and during that time period, the AOC was working diligently on other transfers with different counties. It became clear when they started working through the term sheets that the information was insufficient. Even though it was insufficient in September, they thought that they could accomplish the transfers in time as stated in the Joint Declaration. Justice Robie asked if there were any other multiple facility agreements. Ms. Dragolovich stated that she personally dealt with a transfer in Placer County. Placer County has 10 facilities; three transferred on one agreement and the others were on separate agreements.

Ms. Rothenberg stated that of the 29 counties that the AOC signed Joint Declarations with, 10 counties and approximately 45 facilities did not transfer by December 31, 2008. She stated that the other counties who transferred in time would be penalized because they did not get adjusted CFPs for finishing

early. Justice Robie asked about the CFPs for the four remaining facilities in Monterey County. Ms. Rothenberg stated that they will be subject to additional penalties. Justice Robie stated that neither the AOC nor the Committee have any authority to waive the penalties. The Legislature did not provide for "waivers" in the legislation.

Ms. Maitland stated that the official dispute request form had options on the type of dispute requested; one of which was a section that addresses the CFPs. Supervisor Tavaglione stated that the CSAC counsel had reviewed the legislation and they all agreed that the Committee did not have the authority to waive the penalties. Justice Robie noted that they can have a disagreement over the CFP calculation itself and the components of the CFP, but not the penalties. Ms. Maitland stated that the inflation factor, or escalators, of the penalties should be able to be adjusted by the Committee. Supervisor Tavaglione wanted to be clear that whatever decision was made did not set a precedent for other counties by circumventing the law by a different interpretation of the law. Ms. Gisele Corrie, Financial Manager, Office of Court Construction and Management, Administrative Office of the Courts, gave a brief description on the inflation factor and how it is associated with the CFP. Ms. Finn asked how much the penalties are because the transfer did not occur by December 31, 2008. Ms. Maitland stated that the CFP was \$505,000 prior to December 31, 2008, and the CFP went up to \$605,000. There was discussion among members and presenters regarding the square footage calculations for common areas in shared-use facilities.

The Committee agreed that they could not waive the penalties. Supervisor Tavaglione stated that he thought the Committee could adjust the escalators. Justice Robie stated that all members and presenters should understand the direction the Committee was giving. Ms. Finn noted that the request from the County was for the Committee to waive the statutory requirements because the buildings did not transfer prior to December 31, 2008.

A motion was made by Justice Robie and Second by Supervisor Tavaglione to deny the waiver of penalties for the Monterey County appeal for the following trial court facilities: Salinas Courthouse-North Wing; Marina Courthouse; Monterey Courthouse; King City Courthouse; and Juvenile Courthouse to the Director of the Department of Finance.

The appeal for Monterey County was recommended for denial by a 3-0 vote.

AYES: Karen Finn
 Justice Robie
 Supervisor Tavaglione

NOES: None

ABSTAIN: None

A motion was made to by Supervisor Tavaglione to adjust the date of the transfers back to December 31, 2008. There were no seconds and the motion failed.

There were no comments or questions from the public before conclusion.

OTHER BUSINESS:

Ms. Osborn reported that there was no other business.

NEXT MEETING:

Ms. Osborn noted that there was no meeting set as yet, but there would be additional meetings in March and April.

Ms. Finn concluded the meeting at 10:40 a.m.